

Calendar No. 275

93D CONGRESS }
1st Session

SENATE

{ REPORT
No. 93-292

EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

JUNE 29 (legislative day, JUNE 25) 1973.—Ordered to be printed

Mr. McGEE, from the Committee on Post Office and Civil Service,
submitted the following

REPORT

[To accompany S. 1989]

The Committee on Post Office and Civil Service, to which was referred the bill (S. 1989) to amend section 225 of the Federal Salary Act of 1967 with respect to certain executive, legislative, and judicial salaries. Having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The primary purpose of this bill is to provide that the report of the Commission Executive, Legislative, and Judicial Salaries would be made to the President every other year instead of every four years; and that the President would likewise make his salary recommendations to the Congress biennially in the odd-numbered years. The new reporting and recommending procedure would begin in 1973.

STATEMENT

Section 225 of the Federal Salary Act of 1967 establishes a Commission on Executive, Legislative, and Judicial salaries, three members appointed by the President of the United States, one of whom is designated as Chairman by the President; two appointed by the Senate; two appointed by the Speaker of the House; and two appointed by the Chief Justice of the United States. The function of the Salary Commission, which serves for one fiscal year, is to study and review the compensation of the top officials of the executive branch under the Executive Schedule, Members of Congress, and justices, judges, and certain other personnel of the judicial branch. Under the Act, the Commission reports its pay recommendations to the President no

later than the January 1 following the close of the fiscal year in which the Commission makes its quadrennial pay review. The President then includes in his next budget to the Congress his recommendations on the exact rates of pay which he deems advisable for the offices and positions with which the Salary Commission is concerned. The President's recommendations become effective at the beginning of the first pay period following the transmittal of his recommendations, unless Congress enacts a conflicting law or specifically disapproves all or part of his recommendations.

President Johnson appointed the first Salary Commission in July, 1968, and the Commission reported its recommendations to the President in December of that year. The President's pay recommendations, made as a part of his January 1969 budget message, became effective, in accordance with the provisions of law, in March 1969.

The present Commission was appointed by President Nixon in December, 1972, too late for the Commission to conclude a review and formulate a report to the President by January 1, 1973. The Commission's report went to the President June 30, 1973, and, under present law, the President's recommendations would be sent to the Congress with his budget message of January, 1974.

S. 1989 would amend existing law to provide that the procedure for the Commission's reporting to the President and the President's making recommendations to the Congress would take place biennially (in odd-numbered years) rather than quadrennially. After 1973, a new Commission would be appointed every second fiscal year, the term of each member to be for one fiscal year. The President could appoint a Commission July 1, 1974, and the Commission would make its report to the President by June 30, 1975. This procedure would be followed in successive two-year periods.

The President would consider the Commission's report and make his pay recommendations to the Congress by August 31. If the Congress did not disapprove his recommendation by specific legislation changing the pay rates or by a resolution of disapproval passed by either body, the pay adjustments would become effective on the first day of the first pay period which begins after thirty calendar days of continuous session of Congress following the transmittal of the President's recommendations. The thirty days would not include *sine die* adjournments of three days or more. The Committee included the "continuous-session" provision to assure that Congress would have ample opportunity to act, if it so desires, on the President's recommendations. The Federal Salary Act provides that any part of the recommendations of the President may, if the recommendations so state, become effective at a later date. S. 1989 does not change that provision, thus continuing the President's authority to postpone the effective date if he believes such action is expedient.

The bill provides that this procedure would begin operation in 1973, so that pay adjustments could become effective early in October, at a date conforming fairly closely with the October 1 effective date set by law for general Federal government pay adjustments based upon Bureau of Labor Statistics comparability figures.

JUSTIFICATION

EXECUTIVE BRANCH COMPRESSION

The Federal pay comparability principle established as public policy in 1962 and stated in 5 U.S.C. 5301 provides that Federal pay rates shall be comparable with private enterprise pay rates for the same levels of work. The law establishes a system under which private enterprise pay rates determined upon the basis of Bureau of Labor Statistics figures are compared with those of the statutory pay system. The data are compiled in the spring and the Civil Service Commission subsequently sends its recommendations for pay adjustments to the President who considers the report and makes pay adjustments to become effective October 1. (The President may, because of national emergency or economic conditions, send to Congress an alternative plan if he considers an October 1 pay adjustment inappropriate.)

This procedure, in which statutory pay adjustments follow those of the private sector, has satisfactorily translated policy into action, except in the upper levels of the General Schedule. Positions in grades GS-18, GS-17, and in four steps of GS-16 have been fixed at \$36,000 a year, since it would be inappropriate for incumbents of these positions to be compensated at rates higher than the rate of \$36,000 established by law for level V of the Executive Schedule. Officials in the Executive Schedule, members of the Federal Judiciary, and Members of Congress have had no pay increase since March 1969, when the President's recommendations to Congress based on the quadrennial Salary Commission's report became effective.

There have been four statutory pay increases since 1969 amounting to a 24.6 percent increase. If the incumbent of a GS-18 position had received the regular comparability increases, his current rate of pay would be \$41,734. Thus he is being denied comparability at the rate of \$5,734 per year. The quadrennial arrangement has effectively placed an arbitrary ceiling on the pay of the Government's top managers; a compression has resulted, vitiating the implementation of the comparability principle.

RECRUITING AND RETIREMENT

The Civil Service Commission advises the Committee that the static pay condition at the top of the General Schedule inhibits recruiting and is having a markedly deleterious effect upon the retirement picture. Top managers who possess readily marketable skills are retiring at the earliest possible time in order to accept private-sector positions with salaries not restricted by a four-year procedure. Retirement income is based upon the retiree's highest three-year annual salary. A Government manager, realizing how slowly his high-three average increases, sees little advantage in continuing his employment in order to increase his retirement annuity. Thus the Departments and agencies are losing valuable managers, and the executive branch is powerless, under the current quadrennial arrangement, to offer monetary inducements. The Committee believes that this compression log-jam must be broken and that the provisions of this bill, providing for 1973

consideration of pay adjustments and subsequent biennial adjustments, constitutes a way out. It comes none too soon.

CONGRESSIONAL SALARIES

For Members of Congress, the quadrennial arrangement offers the particular disadvantage that when pay increases are authorized they have been so long in coming that their magnitude invites criticism from those unaware that four years of inflation have intervened since the last pay adjustment. The Committee believes that a procedure authorizing more modest though more frequent adjustments is not only more equitable to the Members but more easily understood by the Congress' constituency. The comparability principle is not applied by law to the compensation of Members, but since other Federal employees have received a 24.6 percent increase during the last four years, the Committee believes that there is no inequity in consideration of Congressional pay more often than quadrennially. The Committee believes that biennial consideration is often enough.

THE FEDERAL JUDICIARY

Mr. Rowland F. Kirks, Director of the Administrative Office of the United States Courts, testified at the Committee's June 26, 1973, hearings. He appeared on behalf of the Judicial Conference of the United States, the policy-making body of the Federal Judicial system. The Conference by law makes recommendations to the Congress on legislative matters affecting the Federal judiciary, its officers and employees. Mr. Kirk's full testimony appears subsequently in this Report under Agency Views.

THE SALARY COMMISSION

The biennial-review provisions of this measure, the inclusion within the review of the Commission of the positions of the Vice President of the United States, the Speaker of the House of Representatives, the President pro tempore of the Senate, the majority and minority leaders of the Senate and House, and Delegates to the House were suggested by the Commission on Executive, Legislative, and Judicial Salaries, whose Chairman is Mr. Arch Patton. The Commission also recommended deletion of the Governors of the Postal Service from the Commission's study. Mr. Patton testified in strong support of S. 1989.

THE PRESIDENT'S OPTION

As noted above, current law provides that the President may postpone to a date selected by him any pay adjustments he may recommend under the Federal Salary Act of 1967. The Committee endorses this provision of law and underscores its importance. It is the Committee's view that pay adjustments recommended by the President should be subject to any salary or other applicable economic restraints which the President may see fit to impose in his efforts to control inflation. It is the Committee's view that the greatest value of S. 1989 lies in its provisions establishing a more reasonable and more equitable salary-review cycle.

HEARINGS

The following witnesses testified at the Committee's hearing on June 26, 1973. All witnesses strongly supported S. 1989:

The Honorable Robert E. Hampton, Chairman, Civil Service Commission.

The Honorable Arch Patton, Chairman, Commission on Executive, Legislative, and Judicial Salaries.

The Honorable Rowland F. Kirks, Director, Administrative Office of the United States Courts.

Mr. Vincent Jay, Executive Vice President and Legislative Liaison, Federal Professional Association.

Mr. Clyde Webber, President, American Federation of Government Employees, AFL-CIO.

COST

S. 1989, providing as it does for biennial rather than quadrennial salary review, would involve a relatively small additional cost to the Government. Since the percentage values of the adjustments to be recommended are not known, that cost cannot be calculated. The current amount of the total salaries involved is \$100 million annually.

COMMITTEE VIEWS

No roll call votes were taken on this measure in committee executive session. However, Senator William Saxbe desires to have his opposition to S. 1989 noted in this report.

AGENCY VIEWS

Following are the statement of Mr. Rowland F. Kirks, Director of the Administrative Office of the United States Courts, who testified at the Committee's hearing on June 26, 1973; and a letter from Mr. Robert Hampton, Chairman of the United States Civil Service Commission:

STATEMENT BY ROWLAND F. KIRKS, DIRECTOR, ADMINISTRATIVE
OFFICE OF THE UNITED STATES COURTS

Mr. Chairman and Members of the Committee: My name is Rowland F. Kirks. I am the Director of the Administrative Office of the United States Courts. I appear today on behalf of the Judicial Conference of the United States to offer the strong support of the federal judiciary to S. 1989. I am authorized to report to you that the bill has been considered by the Executive Committee of the Judicial Conference of the United States and has been approved unanimously by that committee. As you may know the Judicial Conference of the United States is the policy-making body of the federal judicial system and by law makes recommendations to the Congress on legislative matters affecting the federal judiciary, its officers and employees.

The purpose of this legislation is to speed up the process under which the recommendations of the Commission on Executive, Legis-

lative and Judicial Salaries, created by the Federal Salary Act of 1967, 81 Stat. 6142, 2 U.S.C. 351 et seq., may be presented by the President to the Congress. If S. 1989 is passed, the recommendations of the Salary Commission in 1973, and of the President with respect to these salaries, may go into effect approximately six months earlier than presently possible under existing law.

A second part of the bill would require the appointment of a Salary Commission biennially instead of quadrennially, as now provided by law. This would make possible a thorough review of the salary structure for Congressmen, Judges and high Government officials at shorter intervals of time and on a more regular basis.

Mr. Chairman, I believe it is fair to say that the provisions of the Federal Salary Act of 1967 relating to the functions of the Commission on Executive, Legislative and Judicial Salaries has not functioned as originally intended. The Salary Act of 1967 brought into the federal salary structure the concept of comparability between salaries in Government and in industry. As to Government employees generally this goal was substantially achieved by the pay increases granted in 1969. Since then Government employees generally have received cost-of-living increases which were designed to keep pace with the increases in the cost of living and increases in salaries granted to labor and employees in the private sector throughout the national economy.

By way of illustration. Since 1969 a government employee in the middle step of grade 15 of the General Schedule has received four cost-of-living increases aggregating on a compounded cumulative basis, 24.6%.

In the private sector during this same period of time the technical professions (GS-15 equivalent) received a 19.5% increase and union journeymen (average of 27 construction crafts) received a 42.2% increase in salary, both compounded cumulatively.

Government officials, including members of Congress and federal judges, whose salaries are determined by the process of the Salary Commission structure in the present law, have received no increase in four years. Under present law they cannot receive an increase in calendar 1973.

This is not the appropriate time or place to discuss what the Salary Commission should do under present law but it certainly is most timely for the Congress to consider amending the law as proposed by S. 1989 so that the Commission could act more quickly and more frequently than present law permits.

The relevance of citing the comparative salary data referred to above and in the attached sheets to this statement is several fold. First it illustrates what has taken place both in and out of government service with respect to salary increases over the past four years while those executive, legislative and judicial salaries covered by the Federal Salary Act of 1967 have stood still. The figures indicate that generally salaries of others have advanced from 25 to 30%. This is a significant amount. In one sense of the word this is lost salary not to be recouped, to those who received no raise.

Second, it graphically highlights the fact that the cumulative percent increase for those not covered by the Federal Salary Act of 1967 becomes so great in four years that to achieve comparability the Commission is faced with, and in turn so is the President and the

Congress, what amounts to a traumatic one-lump adjustment which cannot help but invite criticism, unjustified though it may be. To amend the law as proposed in S. 1989 to require the Commission procedure to function every two years rather than every four will tend to reduce the significance of this aspect of the problem.

Third, the feature of S. 1989 which would require Commission, President and Congressional action in calendar 1973 and every two years thereafter would have a particularly salutary effect in 1973 with respect to the top classified employees in the judicial system who are frozen in their present salaries which are fixed as a percent of the salary of a district judge as long as the salary of a district judge remains static.

As an example, referees in bankruptcy, U.S. magistrates, clerks of court and probation officers who have reached the top of their grades can no longer receive increases in salary as long as the district judge's salary remains at its present level. This of course prejudices this class of employee when compared with other employees not so restricted.

Mr. Chairman, I would like to submit the two tables attached to this statement showing what the salaries of United States circuit and district judges would be today if the cost-of-living salary increases granted others had been authorized for them and the private industry pay increases.

If there is merit to the concept of comparability, equality, parity, or fair play, then substantial salary increases for Government officials covered by the Federal Salary Act of 1967 is long overdue and should not be delayed as long again. Under existing law the earliest time at which an increase can be forthcoming would be approximately March of next year—9 to 10 months away. S. 1989 would make it possible to put into effect by October of this year whatever increases may be recommended by the Salary Commission and approved by the President and the Congress.

S. 1989 also would require action by the Commission every two years rather than every four, a most desirable change in the law.

The federal judiciary heartily supports this bill and hopes that it will be speedily enacted.

PRIVATE INDUSTRY PAY INCREASES ¹

	Technical professions (GS-15 equivalent)		Union journeymen (average of 27 construction crafts)	
	Percent	Amount	Percent	Amount
1969		\$27,092		\$12,209
1970	2.4	27,731	11.4	13,600
1971	—, 1	27,714	11.6	15,142
1972	11.2	30,827	² 7.0	16,224
1973	² 5.0	32,368	² 7.0	17,360
Projections:				
1974	5.0	33,987	7.0	18,575
1975	5.0	35,686	7.0	19,875
1976	5.0	37,470	7.0	21,266
1977	5.0	39,344	7.0	22,755
1978	5.0	41,311	7.0	24,348
Cumulative increase:				
1973 over 1969	19.5	5,276	42.2	5,151
1974 over 1969	25.4	6,896	52.1	6,366
1975 over 1969	31.7	8,594	62.8	7,666
1976 over 1969	38.3	10,378	74.2	9,057
1977 over 1969	45.2	12,252	86.4	10,546
1978 over 1969	52.5	14,219	99.4	12,139

¹ Bureau of Labor Statistics, data.² Bureau of Labor Statistics, estimate.

Effective date	General schedule pay increases		Comparability increases for judges	
	Percentage increase	Salary grade 15, step 4	Circuit judge	District judge
July 14, 1969.....		\$23,749	¹ \$42,500	¹ \$40,000
Dec. 27, 1969 ²		25,174	45,050	42,400
Jan. 11, 1971.....	6.0	26,675	47,753	44,944
Jan. 10, 1972.....	6.0	28,142	50,379	47,416
Jan. 8, 1973.....	5.5	29,589	52,968	49,853
Cumulative loss through 1973.....	5.1		³ (\$26,150)	³ (\$24,613)
Projections:				
January 1974.....	5.5	31,216	55,881	52,595
January 1975.....	5.5	32,933	58,954	55,487
January 1976.....	5.5	34,744	62,196	58,539
January 1977.....	5.5	36,654	65,616	61,758
January 1978.....	5.5	38,670	69,225	65,154
Cumulative increases: ⁴				
1973 over 1969.....	24.6	5,840	10,468	9,853
1974 over 1969.....	31.4	7,467	13,831	12,595
1975 over 1969.....	38.7	9,184	16,454	15,487
1976 over 1969.....	46.3	10,995	19,696	18,539
1977 over 1969.....	54.3	12,905	23,116	21,758
1978 over 1969.....	62.8	14,921	26,752	25,154

¹ Effective Mar. 1, 1969.² Approved Apr. 15, 1970, retroactive to Dec. 27, 1969.

³ These cumulative losses are the total dollars not received by the judges since 1969, because they did not receive the annual increases each year which were received by employees in the General Schedule. The \$24,613 total for district judges, for example, reflects the total not received by those judges since 1969—first, the \$2,400 increase indicated for them by the 6-percent increase awarded to the General Schedule employees on Dec. 27, 1969—and this \$2,400 loss was experienced for each of the 4 years, 1970, 1971, 1972, and 1973. Secondly, the next increase, granted on Jan. 11, 1971, was also lost to the district judges for a 3-year period, beginning with the year 1971, etc.

⁴ It should be clearly understood that the percentages shown in this portion of the table are those reflecting the total increase over the period of years shown. Because of the compounding effect any particular cumulative percentage increase will exceed the sum of the individual annual percentage increases during the period covered.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., June 25, 1973.

HON. GALE W. MCGEE,
Chairman, Committee on Post Office and Civil Service, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the view of the Civil Service Commission on S. 1989, a bill "To amend section 225 of the Federal Salary Act of 1967 with respect to certain executive, legislative, and judicial salaries."

S. 1989 would change the timetable of the present quadrennial review and adjustment procedure for the salaries of the Government's top officials. Under the provisions of this bill, the Commission on Executive, Legislative, and Judicial Salaries would be required to submit its report to the President by the end of the fiscal year in which it is appointed, and the President would be required to transmit to Congress his own recommendations on new pay rates not later than the next August 31. The new pay rates would become effective at the beginning of the first pay period which begins after thirty days of continuous session of Congress after transmittal of the President's recommendations, unless the recommendations provided some later effective date or unless either House of Congress disapproved the recommendations. These changes in the timetable of the adjustment procedure would all become effective this year. S. 1989 also provides that in the future, starting in fiscal year 1975, this review and adjustment procedure will occur every two years instead of every four years.

The Civil Service Commission strongly supports all of these changes in the timing of the adjustment procedure for salaries of top officials.

In particular, we believe a biennial rather than quadrennial adjustment cycle will be a considerable improvement.

S. 1989 would also bring the salaries of the Vice President, the Speaker of the House of Representatives, the President pro tempore of the Senate, and the majority and minority leaders of the Senate and the House of Representatives within the scope of the review and adjustment process. We believe this will be a very desirable change, as it will obviate special legislation such as Public Law 91-67 each time the salaries of the Government's other top officials are adjusted. We note that S. 1989 would also remove from the review and adjustment procedure the rate of compensation for the members of the Board of Governors of the United States Postal Service. We must defer to the views of the Postal Service on the desirability of this change.

We are advised by the Office of Management and Budget that, from the standpoint of the Administration's programs, there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON, *Chairman.*

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX or the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in black brackets; new matter is shown in italic):

COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

SEC. 225. (a) ESTABLISHMENT OF COMMISSION.—There is hereby established a commission to be known as the Commission on Executive, Legislative, and Judicial Salaries (hereinafter referred to as the "Commission").

(b) MEMBERSHIP.—(1) The Commission shall be composed of nine members who shall be appointed from private life, as follows:

* * * * *

(3) [After the close of the 1969 fiscal year of the Federal Government, persons shall be appointed as members of the Commission with respect to every fourth fiscal year following the 1969 fiscal year.] After the close of the 1969 fiscal year of the Federal Government, persons shall be appointed as members of the Commission with respect to the 1973 fiscal year and every second fiscal year thereafter.

* * * * *

(f) FUNCTION.—The Commission shall conduct, in each of the respective fiscal years referred to in subsection (b) (2) and (3) of this section, a review of the rates of pay of—

(A) Senators, Members of the House of Representatives, *Delegates to the House of Representatives*, and the Resident Commissioner from Puerto Rico;

* * * * *

(D) offices and positions under the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code; and

[(E) the Governors of the Board of Governors of the United States Postal Service appointed under section 202 of title 39, United States Code.]

(E) the Vice President of the United States, the Speaker of the House of Representatives, the President pro tempore of the Senate, and the majority and minority leaders of the Senate and House of Representatives, except that the review of rates of pay of positions included in this subparagraph shall be made commencing with fiscal year 1975.

* * * * *

(g) **REPORT BY COMMISSION TO THE PRESIDENT.**—The Commission shall submit to the President a report of the results of each review conducted by the Commission of the offices and positions within the purview of subparagraphs (A), (B), (C), [and (D)] (D), and (E) of subsection (f) of this section, together with its recommendations. [Each such report shall be submitted on such date as the President may designate but not later than January 1 next following the close of the fiscal year in which the review is conducted by the Commission.] *Commencing with respect to fiscal year 1973, each such report shall be submitted on such date as the President may designate during the period from January 1 through June 30 of the fiscal year in which the review is conducted by the Commission.*

[(h) **RECOMMENDATIONS OF THE PRESIDENT WITH RESPECT TO PAY.**—The President shall include, in the budget next transmitted by him to the Congress after the date of the submission of the report and recommendations of the Commission under subsection (g) of this section, his recommendations with respect to the exact rates of pay which he deems advisable, for those offices and positions within the purview of subparagraphs (A), (B), (C), and (D) of subsection (f) of this section. As used in this subsection, the term “budget” means the budget referred to in section 201 of the Budget and Accounting Act, 1921, as amended (31 U.S.C. 11).]

(h) RECOMMENDATIONS OF THE PRESIDENT WITH RESPECT TO PAY.—Commencing in 1973, the President shall transmit to Congress, not later than the August 31 first occurring after the submission of the report and recommendations of the Commission under subsection (g) of this section, his recommendations with respect to the exact rates of pay which he deems advisable, for those offices and positions within the purview of subparagraphs (A), (B), (C), (D), and (E) of subsection (f) of this section (including recommendations to be effective in fiscal year 1974 in accordance with subsection (i) of this section with respect to positions included in such subparagraph (E)).

(i) **EFFECTIVE DATE OF RECOMMENDATIONS OF THE PRESIDENT.**—

[(1) Except as provided in paragraph (2) of this subsection, all or part (as the case may be) of the recommendations of the President transmitted to the Congress in the budget under subsection (h) of this section shall become effective at the beginning of the first pay period which begins after the thirtieth day following the transmittal of such recommendations in the budget; but only to the extent that, between the date of transmittal of such recommendations in the budget and the beginning of such first pay period—

(A) there has not been enacted into law a statute which establishes rates of pay other than those proposed by all or part of such recommendations,

(B) neither House of the Congress has enacted legislation which specifically disapproves all or part of such recommendations, or

(C) both.】

(1) *Except as provided in paragraph (2) of this subsection, all or part (as the case may be) of the recommendations of the President transmitted to the Congress under subsection (h) of this section shall become effective at the beginning of the first pay period which begins after thirty calendar days of continuous session of Congress following transmittal of such recommendations; but only to the extent that, between the date of transmittal of such recommendations and the beginning of such first pay period—*

(A) there has not been enacted into law a statute which establishes rates of pay other than those proposed by all or part of such recommendations;

(B) neither House of the Congress has passed a resolution which specifically disapproves all or part of such recommendations; or

(C) both. The continuity of a session is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the thirty-day period.

(2) Any part of the recommendations of the President may, in accordance with express provisions of such recommendations, be made operative on a date later than the date on which such recommendations otherwise are to take effect.

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